

Legal Name: Inpax Shipping Solutions, Inc.
D/b/a: Inpax Shipping Solutions
Inpax Shipping Solutions
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WHISARD ID# 2016-186-1805951
CASE ID # 1805951

FLSA NARRATIVE

COVERAGE

Inpax Shipping Solutions, Inc and Ship Inpax, LLC are in the business of transportation of goods in interstate commerce as well as performing last mile delivery of goods sold by (b) 4. They are commonly owned by one person Leonard Wright. Inpax Shipping Solutions and Ship Inpax are joint employers with (b) 4 via contract. They employ Courier drivers that are assigned to work out of (b) 4 warehouses to deliver orders to individual customers in the local area, Freight Drivers that drive long distance delivering packages and freight and Admin Staff. The drivers delivered goods that were traveling in interstate commerce at their time of delivery. Inpax Shipping Solutions and Ship Inpax employees routinely transported goods in interstate commerce. Per section 203(r) of the Fair Labor Standards Act (FLSA) and the legal definition of enterprise under the FLSA, Inpax Shipping Solutions, Ship Inpax, and (b) 4 would be considered part of the same enterprise. Inpax Shipping Solutions was incorporated in the State of Georgia on December 5, 2015 and Ship Inpax was formed in the State of Georgia on June 30, 2009. Leonard Wright is the President and sole owner, who has 100% controlling interest in Inpax Shipping Solutions. Leonard Wright is also the president and majority owner who has a (b) 4 controlling interest in Ship Inpax, LLC. They are covered as

an enterprise per section 203(s)(1)(a) of the Fair Labor Standards Act. They have 90 employees in the Atlanta establishment and (b) 4 for the enterprise. The combined annual dollar volume (ADV) for Inpax Shipping Solutions, Inc and for Ship Inpax, LLC is (b) 4 in 2015. (b) 4 has (b) 4 employees and had an ADV of (b) 4 in 2015. The employees that deliver goods for (b) 4 wear uniforms with the (b) 4 name and logo. Not all employees of Inpax Shipping solution and Ship Inpax work from the (b) 4 warehouse these employees work out of different properties owned by Inpax Shipping Solutions.

FLSA Sec 203(d) employer: Mr. Lewis Richardson is the 203(d) employer, which controls the day-to-day operations of the subject firm to include hiring/firing, acquiring business contracts, and making important business decisions that would affect the potential growth of the company. He does all of the estimating (of the jobs), runs all of the jobs, send the employees to do the jobs that he assigns them work. See Exhibit C-1 through C-1-F.

MODO instructions: Case is associated with MODO ID 62186 with instructions to contact MODO manager if systemic violations are found before final conference.

Employment Relationship: Inpax Shipping Solutions, Inc has some Freight Drivers misclassified as Independent contractors prior to the investigation. Inpax Shipping Solutions, Inc has been issuing 1099's to these employees. Note the 6 factors and final determination below:

Extent to which the services in question are an integral part of the employer's business:

The employer owns the business; the employees are assigned work through the company. There are some drivers that own their own truck and make their schedules but this does not apply to all freight drivers. They were all classified as Independent Contractors prior to the investigation. None of the freight drivers were classified as employees prior to this investigation. Most of them work in relation to the other but they all perform the same type of work. I was not able to speak with any of the other drivers because the employer does not have phone numbers for the current or former drivers.

The work of the freight drivers is an integral part of the business because their work is why

the company is able to make the profits they make. These workers are part of the production process. The company could not function without the freight drivers which were classified as Independent Contractors- they are dependent on their production in order to meet their obligations to their customers. These reasons support an employment relationship.

The worker's opportunity for profit and loss:

Inpax Shipping Solutions, Inc sets the rates of pay for most of the freight drivers they considered Independent Contractors and pay them with a company check. They did not negotiate a rate and there was no bidding process. Some of the freight drivers (Independent contractors) do not hire and fire and some of them do hire the people they work with. Inpax train and inform them of the time to come to work and leave while some of the drivers that are contractors do their own training of workers. Most of the equipment they use are provided by the company. Some of them have formed a legal entity. There is no ability for some of these workers to increase profit-loss as they are paid what Inpax Shipping Solutions, Inc determines what they will be paid. These facts support an employment relationship.

The relative investments of the worker and employer:

Equipment and Supplies for the freight drivers are provided by the employer Inpax Shipping Solutions, Inc, there is no financing; the employees use the equipment and supplies and either dispose of or store them. There are licensed drivers or certification required to be a freight driver but there are no investments for most of them. These facts support a finding of an employment relationship.

Whether the services rendered by the worker require special skill:

There are no special skillsets/requirements as a freight driver other than having a commercial driver license (CDL), they hold a license or certification, there are no education requirements, there is a report to person over the freight drivers to determine how the work is performed and makes their schedule. The employer tells them what time to come in and what time to leave. The facts find an employment relationship.

The permanence of the working relationship:

This is the only employer that some of the workers work for and they are permanent. The investigation can not determine the number of hours a week and the number of days a week. They were hired directly and they do not have a contract. The facts find an employment

relationship.

The nature and degree of the employer's control as to the manner in which the work is performed:

The employer determines if there is going to be a bonus paid, there are no job tickets prepared for the workers, the workers do not prepare their own payroll or taxes, they were given a IRS 1099 prior to this investigation, there is no billing to handle because they are not charging the employer a fee to work but are paid via a Bill of Lading, some of them have a manager that supervises them, the employer tells them the time to be at work, they have to ask for permission to take leave, they are treated like employees, some of them do not hire and fire the people they work with. The facts support a finding of an employment relationship.

In conclusion It looks like the drivers that own their own trucks are independent contractors and the ones that use the company trucks are going to be employees. Problem though is that it appears that most of them have received at least minimum wage for all the hours they worked even with the illegal uniform deductions and possibly illegal insurance deductions. I am still seeking statements from truck drivers to determine if any of them were paid less than minimum wage.

EXEMPTIONS

In accordance to FLSA sections 13(a)(1) **(b) 6 & (b) 7C**, Lewis Richardson and David Williams were tested for Exemptions per 541 and found to be exempt. The exemptions do apply to the following personnel.

No other exemptions claimed for overtime because all of the employees are hourly and punch the time clock.

STATUS OF COMPLIANCE

History: There is prior history for this employer. WHISARD CASE ID 176511, period of investigation of April 01, 2015 through August 29, 2015. Employer had a total of 68 violations totaling \$16,520.10. ER ATC/ATP and paid all back wages to all employees due back wages.

(b) 7(E)

(b) 7(D)

(b) 7(D)

(b) 7(E)

(b) 7(D)

alleges of he has no idea as to how he is being paid. (b) 7(D) alleges to be a truck driver that drives local and long distance. He alleges to start his day at 6am and 14 hours a day and 70 hours a week. He alleges to drive and drop loads and pick up loads. (b) 7(D) alleges his check fluctuates but his hours are the same.

FLSA Section 206, Minimum Wage

No violations founded for this investigation

FLSA Section 207, Overtime

The ER violated Section 207 by not paying proper overtime. The ER was paying a weekly production bonus to the Courier Drivers and not adding it to the Regular Rate. The overtime paid was paid based on the number of hours worked in the week. 43 EEs were affected and are due back wages. ER agreed to comply and pay the back wages to all employees due OT in the Atlanta area.

Method of Computations:

Gross + Bonus \ HRS = RR x 1.5 = OT rate \ OT HRS = OT Due – OT PD = OT wages.

Total OT wages owed = \$15,774.59 for 43 EEs

FLSA Section 211, Record Keeping

The employer did not provide or keep accurate payroll records for hours worked in accordance to Regulation 516.2, 516.3, 516.4, 516.5, 516.6 and 516.8. The employer had posters posted but not in clear view for employees and did not have records to show the basic information such as name, address and phone number.

FLSA Section 212, Child Labor

There were no violations founded for this investigation

Disposition

WHI (b) (6) & (b) (7)(C) held an initial conference held at the establishment on November 30, 2016 with Louis G. BcBryan (Attorney), David Williams (CFO) and Lewis Richardson (HR Director). WHI (b) (6) & (b) (7)(C) provided a copy of the FLSA Handy Reference Guide, FS#44 and FS#77A at this time. During the initial conference Lewis Richardson also stated there were no FLSA section 16(b) lawsuits against the employer at the present time. See Exhibit C-1 through C-1-E

WHI (b) (6) & (b) (7)(C) held a final conference at the Atlanta DO on March 29, 2017 with David Williams (CFO), (b) (6) & (b) (7)(C) (WHI) and (b) (6) & (b) (7)(C) (WHI) representing Wage and Hour. See Exhibit C-2 through C-2-E.

In the conference we talked about enterprise and individual coverage, including ADV. WHI (b) (6) & (b) (7)(C) explained how enterprise and individual coverage is determined. WHI (b) (6) & (b) (7)(C) passed a copy of the Fair Labor Standards Act (FLSA) to the employer and had him open it to the section where the establishment is covered. WHI (b) (6) & (b) (7)(C) then started by explaining enterprise coverage and how WHD uses this to determine how to proceed with an investigation. WHI (b) (6) & (b) (7)(C) explained this establishment is covered per FLSA Section 203(s) (1) (a). WHI (b) (6) & (b) (7)(C) also explained individual coverage and how it would pertain to the establishment and employees that are engaged in commerce or goods shipped in commerce across state lines for coverage if the establishment was not covered. WHI (b) (6) & (b) (7)(C) then asked if there are any questions and he said no.

We then discussed exemptions. WHI (b) (6) & (b) (7)(C) explained that in accordance to Reg. 541 that David Williams and Lewis Richardson were tested for exemption per Regulation 541. Per the test the exemption applies to both of them per the regulation.

We then discussed Recordkeeping. WHI (b) (6) & (b) (7)(C) passed him a copy of Reg. 516. WHI (b) (6) & (b) (7)(C) explained that in accordance with Reg. 516.2 they should have records for all employees that are subject to minimum wage and overtime. WHI (b) (6) & (b) (7)(C) went on to explain to them that they should preserve records in accordance to 516.5 and 516.6, to maintain 2yrs of basic records and 3yrs of payroll, certificates, plans, agreements, sales and purchases and have all posters

posted in accordance to 516.4 posting. WHI (b) (6) & (b) (7)(C) further explained that this is the law for all bona fide covered employers with employees. There was a charged violation for Recordkeeping because they did not provide accurate records of time and payroll for all employees and the FMLA Policy was not updated. The employer has since come into compliance by paying the correct overtime for employees with the production bonuses and will contact WHI (b) (6) & (b) (7)(C) for assistance as needed. This case was extended because WHI (b) (6) & (b) (7)(C) was trying to make computations for 5 states and numerous employees. WHI (b) (6) & (b) (7)(C) also had issues with his computer where it was losing the data he saved on a number of occasions. WHI (b) (6) & (b) (7)(C) asked him if he had any questions and he said no.

We discussed hours worked. WHI (b) (6) & (b) (7)(C) passed him a copy of Reg. 785. WHI (b) (6) & (b) (7)(C) had him to turn to the various parts of the publication to know where the key parts that mostly apply to the enterprise was located. WHI (b) (6) & (b) (7)(C) asked if he had any questions and he said no.

WHI (b) (6) & (b) (7)(C) passed them a copy of Reg. 778 and we then discussed Overtime. WHI (b) (6) & (b) (7)(C) explained that each workweek stands alone and that any hours after 40 should be paid at time and a half. WHI (b) (6) & (b) (7)(C) explained that because they paid overtime based on the hours over 40 and did not include the bonus is why the violation occurred. WHI (b) (6) & (b) (7)(C) explained to him that they should have added the bonus which would have changed the regular rate and then paid the overtime. The ER stated that after looking at the publication he realized that the bonus was not added to the gross wages and was paid wrong. He also showed me the payroll since January 2017 that they are now paying proper overtime. WHI (b) (6) & (b) (7)(C) asked if they had any questions and they said no.

WHI (b) (6) & (b) (7)(C) then passed a copy of Reg. 825 and explained the violations charged to FMLA. The employer agreed to remedy the violation and fix the policy. He stated that he should have the policy written and sent to me in a week.

WHI (b) (6) & (b) (7)(C) explained Child Labor where there were no violations but discussed what could be a violation for Hazardous Occupations.

In conclusion WHI (b) (6) & (b) (7)(C) explained how it is important for all covered business establishments to be compliant within all Federal Regulations. WHI (b) (6) & (b) (7)(C) explained that minimum wage is \$7.25 which all businesses must pay their employees at least. WHI (b) (6) & (b) (7)(C) also explained that records

should be kept on every employee in the establishment. If records are kept then it is known in accordance to the regulations that all employees should be paid for all hours worked. This means that each workweek stands alone meaning any hours over 40 in a week should be paid at time and a half.

This is a Freight/Courier Company that work for (b) 4 by doing what is called "Final Mile Delivery" in Chicago, Atlanta, Dallas and Miami and just recently added Cincinnati to the company. They do the same for (b) 4. Freight operations in Atlanta GA goes across state lines delivering goods and the same in North Carolina. They also do Courier Service Envelopes and Semi Loads in GA.

Recommendations:

WHI recommends CMPs for this employer. The employer willfully violated 29CFR578 of not paying proper overtime. The violations are on the face of the records of the employer not paying proper overtime due to how he was paying bonuses. This was brought to the employers' attention. He has agreed to comply going forward and changing his pay practices to insure he is paying correct for MW and OT.

Publications

WHI (b) 6 & (b) 7C provided these publications to the employer during this compliance action:

FLSA: FLSA, HRG, FS#44, FS#77A, PT. 516, PT. 541, PT. 778, PT. 785,
PT.825

CL: WH1330

Employer Contact

- Direct any correspondence to:

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(b) 6 & (b) 7C

Wage & Hour Investigator